

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

In Re:)	
)	NO. 15 B 25700
SYED A. ISHAQ)	
)	
)	Chapter 13
Debtor)	
)	
)	
)	Honorable Judge Janet S. Baer
)	

NOTICE OF MOTION

TO: Tom Vaughn, Chapter 13 Trustee (via ECF)
Codilis and Associates, representing JPMorgan Chase Bank, N.A. (via ECF)
JPMorgan Chase Bank, N.A. ATTN: James Diamond, President & CEO 270 Park Ave New
York, New York 10017 (via U.S. Certified Mail)

PLEASE TAKE NOTICE that on December 31, 2015 at 10:30 a.m., the undersigned will appear before the Honorable Janet S. Baer at the Everett McKinley Dirksen United States Courthouse located at 219 South Dearborn Street, Courtroom 615, Chicago, Illinois and will then and there present the attached **DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 506(a) AND BANKRUPTCY RULE 3012 TO DETERMINE THE VALUE OF 5151 WEBER LANE, SKOKIE, ILLINOIS 60077 AND TO BIFURCATE JPMORGAN CHASE BANK, N.A.'S CLAIM 4** at which time you may appear if you so choose.

Certificate of Service

I, Charles Magerski, hereby certify that I caused to be served, electronically via ECF to the Chapter 13 Trustee and Codilis and Associates, and via Certified U.S. Mail to JPMorgan Chase Bank, N.A. ATTN: Jamie Diamond, President & CEO and attached a copy of the forgoing Notice and Motion upon the parties named above on December 24, 2015, from the office located at 900 Jorie Blvd., Ste 150, Oak Brook, IL 60523.

**BY: /S/ CHARLES L. MAGERSKI
SULAIMAN LAW GROUP, LTD
COUNSEL FOR DEBTOR(S)
900 JORIE BOULEVARD, SUITE 150
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FAX: (630) 575-8188
ATTORNEY NO: 6297092**

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**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 506(a) AND BANKRUPTCY RULE
3012 TO DETERMINE THE VALUE OF 5151 WEBER LANE, SKOKIE, ILLINOIS
60077 AND TO BIFURCATE JPMORGAN CHASE BANK, N.A.'S CLAIM 4**

NOW COMES, SYED ISHAQ (“Debtor”), by and through his attorneys, Sulaiman Law Group, LTD., and pursuant to 11 U.S.C §506(a) and Federal Bankruptcy Rule 3012, moves this Honorable Court to determine the fair market value of the real estate commonly known as 5151 Weber Lane, Skokie, Illinois 60077 and bifurcate the lien of JPMorgan Chase Bank, N.A. (“Chase”), and in support thereof stating the following:

1. This is a motion brought by the Debtor pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure to determine the value of the real estate commonly known as 5151 Weber Lane, Skokie, Illinois 60077 and to bifurcate Chase's Claim 4.
2. The Debtor alleges that this is a core proceeding as that term is defined by Section 157(b)(2) of Title 28 of the United States Code in that it concerns claims and matters arising out of the administration of this bankruptcy case and rights duly established under Title 11 of the United States Code and other applicable federal law.

3. The Debtor further alleges that this Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code and Section 157(b)(2) of Title 228 of the United States Code.

4. The underlying Chapter 13 bankruptcy case was commenced by the filing of a voluntary petition with the Clerk of this Court on July 28, 2015.

5. The 341 Meeting of Creditors was held and concluded on August 27, 2015.

6. The confirmation date for the underlying Chapter 13 proceeding is currently set for December 31, 2015.

7. Upon information and belief, Chase is an entity engaged in the business of lending in the State of Illinois.

8. The Debtor is the owner of the real property commonly known as 5151 Weber Lane, Skokie, Illinois 60077 ("real estate").

9. The subject real estate is not the Debtor's primary residence.

10. The Permanent Index Number of the real estate is 10-09-421-046-0000.

11. At the time of the filing of the instant Chapter 13 proceeding, the fair market of the real estate was \$210,000.00. *See* attached Exhibit A is a true and accurate copy of the appraisal conducted by a certified residential real estate appraiser.

12. Upon information and belief, MNH Sub 1 LLC. has an interest in the real estate as a result of a first mortgage recorded in the Cook County Recorder of Deeds Office in the amount of \$82,305.84. *See* attached Exhibit B is a true and accurate copy of Claim 6-1 filed by MNH Sub 1 LLC.

13. Upon information and belief, Chase has an interest in the real estate as a result of a second mortgage recorded in the Cook County Recorder of Deeds Office in the amount of

\$219,086.32 and the Note becomes due on July 12, 2020. *See* attached Exhibit C is a true and accurate copy of Claim 4 filed by JPMorgan Chase Bank N.A.

14. Pursuant to 11 U.S.C. §§ 506(a) & (d), a creditor would only have a secured claim to the extent of the value of the bankruptcy estate's interest in the property securing the claim. As a result, a creditor's lien is void to the extent it is not an allowed secured claim.

15. "The valuation of an under-secured mortgage claim is commonly referred to as a 'strip down' or 'cram down'. Where the valuation of property indicates that a claim is partially secured, the secured portion of the claim is paid through the debtor's plan as an allowed secured claim, and the unsecured portion is 'stripped down' to an allowed unsecured claim. The unsecured claim generally is paid on a pro rata basis along with all other general unsecured claims." *In re Pierre*, 468 B.R. 419, 422 (Bankr.M.D.Fla 2012).

16. Moreover, a junior lien holder would only have a secured claim to the extent the fair market value of the secured asset exceeds the amount of the lien held by the primary lien holder.

17. Where the junior mortgage is wholly unsecured, it should not be allowed as a secured claim, and that the mortgage lien may be stripped off. *In re Havel*, 2002 WL 31944059 (Bankr. S.D. Ill. 2002); *In re Mann*, 249 B.R. 831, 840 (1st Cir. BAP 2000); *In Re Pond*, 2001 252 F.3d 122 (2nd Cir. 2001); *In Re MacDonald*, 205 F. 3d 606 (3rd Cir. 2000); *Bartee v. Tara Colony Homeowners Assoc.*, 212 F. 3d 277 (5th Cir. 2000); *In Re Lam*, 211 B.R. 36 (9th Cir. BAP 1357); *In Re Tanner*, 217 F. 3d 1357 (11th Cir. 2000).

18. Pursuant to 11 U.S.C. §506(a) and Federal Rule of Bankruptcy Procedure 3012, based on the fair market value of the real estate being \$210,000.00 and the balance of MNH Sub I, LLC's first mortgage claim in the amount of \$82,305.84 , the second mortgage, claim 4 of Chase,

should bifurcated to a secured claim of \$127,694.16 and an unsecured claim for the remaining balance.

WHEREFORE, the Debtor, Syed Ishaq, prays this Honorable Court enter an Order as follows:

1. Determining that the Fair Market Value of the Real Estate commonly known as 5151 Weber Lane, Skokie, Illinois 60077 is \$210,000.00;
2. Determining JPMorgan Chase Bank, N.A.'s second mortgage lien, Claim 4, is secured in the amount of \$126,694.16;
3. Determining that JPMorgan Chase Bank, N.A has an unsecured claim, Claim 4, for any balance in excess of \$126,694.16;
4. Determining upon completion of Debtor's Chapter 13 Plan, JPMorgan Chase Bank, N.A.'s lien shall be satisfied and released;
5. For any other and further relief as the Court may seem just and proper.

Dated: December 24, 2015

Respectfully Submitted,

/s/ Charles L. Magerski
Charles L. Magerski, Esq. #6297092
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